

Judge: Karen A. Overstreet  
Chapter: 13  
Hearing Date: May 19, 2010  
Hearing Time: 9:30 a.m.  
Hearing Location:  
Judge Overstreet's Courtroom  
700 Stewart St #7206  
Seattle, WA 98101  
Response Date: May 12, 2010

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re:

JOHN GERARD BIANCO and  
GAIL ELAINE BIANCO,  
  
Debtor(s).

IN CHAPTER 13 PROCEEDING  
NO. 10-11270-KAO

OBJECTION TO CONFIRMATION  
OF PLAN AND MOTION TO  
DISMISS CASE

K. Michael Fitzgerald, Chapter 13 Trustee, objects to the confirmation of the debtors' Chapter 13 plan and moves to dismiss the debtors' Chapter 13 case. In support of his Objection and Motion, the Trustee states as follows:

The debtors filed this case on February 8, 2010. The debtors' Chapter 13 plan, filed February 22, 2010, proposes monthly plan payments of \$321.05. The debtors are currently \$321.05 delinquent on plan payments.

Only an individual that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$336,900.00 may be a debtor under Chapter 13. 11 U.S.C. § 109(e). The debtors' schedules disclose \$570,588.21 in unsecured debt. Because the debtors' unsecured debt exceeds the Chapter 13 jurisdictional limit, the debtors are not eligible for Chapter 13 relief.

The Trustee also objects to confirmation and moves to dismiss for these additional (non-exhaustive list of) reasons:

1) Section XII. of the plan provides, among other things, that "Debtor's Right of Redemption shall remain property of the bankruptcy estate and shall be liquidated by Trustee." The Trustee objects to this provision and the remainder of that section. Generally speaking, the

OBJECTION TO CONFIRMATION  
AND MOTION TO DISMISS - 1

Chapter 13 Trustee  
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1 duties of a chapter 13 trustee do not include a mandate to collect and reduce to money the  
2 property of the estate. See 11 U.S.C. § 1302(b)(1). It appears this case should have been filed  
3 under chapter 7 or chapter 11 of the Bankruptcy Code.

4 2) Section II.E. of the plan provides for pre-confirmation direct payments to two  
5 mortgage creditors with the payments added to the plan post-confirmation. This provision is  
6 confusing. If the mortgages were delinquent on the petition date, they must be paid through the  
7 plan; if they were current, then they may be paid directly by the debtors.

8 3) Both Sections IV.E.2.b. and IX. of the plan include the figure \$351,870.00. It is  
9 unclear where that figure was derived and, moreover, the projected disposable income and  
10 liquidation value are generally different figures. The Trustee does not believe that figure is  
11 accurate under either section.

12 4) The debtors' Form B22C (means test) and Section I.B. of the plan need to be  
13 amended. The Form B22C filed April 4, 2010 provides for a commitment period of sixty months  
14 and negative monthly disposable income, but that is inconsistent with the plan.

15 5) The debtors' Schedule C also needs to be amended. For example, the debtors  
16 incorrectly claimed a \$10,000.00 exemption under Wash. Rev. Code § 6.27.150 for patient  
17 accounts. To preserve his ability to do so, the Trustee objects to all the debtors' exemptions.

18 While there are other issues with this case, the debtors are simply not eligible for Chapter  
19 13 relief. The Trustee reserves the right to assert additional bases for his Objection and Motion,  
20 and he reserves the right to expand upon the above objections. A proposed Order on this  
21 Objection and Motion is attached and incorporated.

22 WHEREFORE, the Chapter 13 Trustee requests that the Court enter an Order denying  
23 confirmation of the debtors' Chapter 13 plan and dismissing the debtors' Chapter 13 case or,  
24 alternatively, converting this case to a chapter for which the debtors are eligible.

25 Dated this 8th day of April, 2010

26  
27 /s/ Jason Wilson-Aguilar, WSBA #33582 for  
28 K. MICHAEL FITZGERALD  
Chapter 13 Trustee